

AMENDED IN ASSEMBLY JULY 6, 2003
AMENDED IN ASSEMBLY JUNE 10, 2003
AMENDED IN SENATE APRIL 22, 2003

SENATE BILL

No. 736

Introduced by Senator Speier

February 21, 2003

An act to amend Sections 17550.4, 17550.13, 17550.14, 17550.20, 17550.21, 17550.30, 17550.37, 17550.41, and 17550.47 of, to add Section 17550.42 to, and to repeal Article 2.5 (commencing with Section 17540) of Chapter 1 of Part 3 of Division 7 and Sections 17550.34 and 17550.59 of, the Business and Professions Code, relating to sellers of travel.

LEGISLATIVE COUNSEL'S DIGEST

SB 736, as amended, Speier. Sellers of travel.

Existing law provides a comprehensive scheme for the regulation of sellers of travel that is to be terminated on January 1, 2006. Under these provisions, sellers of travel are required, unless exempted, to register with the Attorney General and to comply with various requirements. Upon termination of these provisions, certain other provisions governing travel promoters become effective. Existing law also creates the Travel Consumer Restitution Corporation as a nonprofit mutual benefit corporation, which administers funds obtained from assessments on sellers of travel for distribution to aggrieved consumers. Existing law limits the time in which an aggrieved consumer may file a complaint to 6 months after the scheduled date of completion of travel. A violation of the provisions governing sellers of travel is a crime.

This bill would delete the termination on January 1, 2006, of the provisions governing sellers of travel, and would delete the provisions governing travel promoters that are to become effective on that date. This bill would make various revisions to the provisions governing sellers of travel and the Travel Consumer Restitution Corporation, relative to the definition of an air carrier, late payment of fees, disclosure requirements, appeals of decisions of the corporation, and various other matters. The bill would also specify certain nomination procedures for nomination as a participant director of the Travel Consumer Restitution Corporation and require a candidate to submit certain information under penalty of perjury, thereby creating a new crime.

This bill would expand the definition of an aggrieved person, for purposes of filing a claim with the Travel Consumer Restitution Fund, to include a person located in California at the time of the sale who made any payment on behalf of the passenger. The bill would also change the time limit in which an aggrieved person may file a claim to one year after the scheduled date of completion of travel. *The bill would expand the purposes for which the moneys in the fund are required to be used to include dissemination of information.*

Because the bill would change the definition of a crime and add a new crime, it would impose a state-mandated local program.

The California Constitution requires the state to reimburse local agencies and school districts for certain costs mandated by the state. Statutory provisions establish procedures for making that reimbursement.

This bill would provide that no reimbursement is required by this act for a specified reason.

Vote: majority. Appropriation: no. Fiscal committee: yes. State-mandated local program: yes.

The people of the State of California do enact as follows:

- 1 SECTION 1. Article 2.5 (commencing with Section 17540)
- 2 of Chapter 1 of Part 3 of Division 7 of the Business and Professions
- 3 Code is repealed.
- 4 SEC. 2. Section 17550.4 of the Business and Professions
- 5 Code is amended to read:
- 6 17550.4. An air carrier is a transporter by air of persons that
- 7 operates under a certificate of convenience and necessity issued by



1 the United States Department of Transportation or under the
2 certification of a foreign government that is recognized by the
3 United States Department of Transportation.

4 SEC. 3. Section 17550.13 of the Business and Professions
5 Code is amended to read:

6 17550.13. (a) A seller of travel shall not receive any money
7 or other valuable consideration in payment for air or sea
8 transportation or other travel services offered by the seller of travel
9 unless at the time of or prior to the receipt of payment the seller of
10 travel first furnishes to the person making that payment written
11 materials conspicuously setting forth the following information:

12 (1) The name and business address and telephone number of
13 the seller of travel.

14 (2) The total amount to be paid by or on behalf of the passenger,
15 amount paid to date, the date of any future payment, the purpose
16 of the payment made, and an itemized statement of the balance
17 due, if any.

18 (3) The name of the provider of the air or sea transportation,
19 and the date, time, and place of each departure, or the
20 circumstances under which the date, time, and place of departure
21 will be determined.

22 (4) All terms and conditions relating to the air or sea
23 transportation or travel services being purchased by the passenger,
24 including cancellation conditions. An air carrier's or an ocean
25 carrier's standard contract of carriage is not required to be
26 disclosed prior to the seller of travel receiving any money or other
27 valuable consideration.

28 There is no violation of this subdivision if both of the following
29 occur:

30 (A) Compliance was rendered impossible as a direct result of
31 an unforeseen condition beyond the control of the seller of travel.

32 (B) The seller of travel obtains from each passenger written
33 acknowledgment that the passenger has not received disclosure of
34 the terms and conditions required by this section.

35 (5) A clear and conspicuous statement that upon cancellation
36 of the transportation or travel services, where the passenger is not
37 at fault and has not canceled in violation of any terms and
38 conditions previously clearly and conspicuously disclosed to and
39 agreed to by the passenger, all sums paid to the seller of travel for
40 services not provided will be promptly paid to the passenger,

1 unless the passenger otherwise advises the seller of travel in
2 writing, after cancellation.

3 (6) If the seller of travel is required by this article to have a trust
4 account or bond, a clear and conspicuous disclosure stating:
5 “California law requires certain sellers of travel to have a trust
6 account or bond. This business has [a trust account] or [a bond
7 issued by (company) in the amount of (\$X)].”

8 (7) If the seller of travel is a participant in the Travel Consumer
9 Restitution Fund and the passenger, or the person making payment
10 for the passenger, was located in California at the time of the sale
11 of air or sea transportation or travel services, a clear and
12 conspicuous notice of the right of the passenger, or the right of the
13 person making payment for the passenger, to make a claim on that
14 fund. The notice shall include a description of the losses covered,
15 the method for making a claim, the time limit within which the
16 claim shall be made, and the amount which may be claimed.

17 (8) If the seller of travel is a participant in a Consumer
18 Protection Deposit Plan that meets the criteria set forth in
19 subdivision (b) of Section 17550.16, a clear and conspicuous
20 notice of the passenger’s right to make a claim on the plan. That
21 notice shall include a description of the losses covered, the method
22 for making a claim, the time limit within which the claim shall be
23 made, and the amount ~~which~~ *that* may be claimed.

24 (9) If the seller of travel is a participant in a Consumer
25 Protection Escrow Plan that meets the criteria set forth in
26 subdivision (c) of Section 17550.16, a clear and conspicuous
27 notice of the passenger’s right to make a claim on the plan. That
28 notice shall include a description of the losses covered, the method
29 for making a claim, the time limit within which the claim shall be
30 made, and the amount that may be claimed.

31 (10) If the seller of travel is not a participant, a clear and
32 conspicuous disclosure that the seller of travel is not a participant
33 in the Travel Consumer Restitution Fund. That disclosure shall be
34 made both orally and in writing.

35 (11) If the seller of travel is a participant in the Travel
36 Consumer Restitution Fund and the passenger is located outside
37 California, a clear and conspicuous disclosure that the transaction
38 is not covered by the Travel Consumer Restitution Fund. That
39 disclosure shall be made both orally and in writing.



1 (b) If a seller of travel offers, sells, provides, or distributes a
2 travel certificate as defined in Section 17550.10 and any passenger
3 payment is nonrefundable, in whole or in part, the seller of travel
4 shall obtain the written acknowledgment of that limitation from
5 the end user prior to, or at the time of, receipt of any money or other
6 valuable consideration.

7 (c) Notwithstanding any other provision of this section, if
8 money or other valuable consideration is received from a customer
9 to whom the seller of travel has sold air or sea transportation within
10 the preceding 12 months and the disclosures required by this
11 section are substantially the same as the disclosures given in
12 connection with the prior travel, the disclosures required by this
13 section shall be made within five days of receipt of that money or
14 other valuable consideration.

15 (d) Notwithstanding any other provision of this section, if
16 money or other valuable consideration is received in payment for
17 air transportation and (1) the seller of travel is an officially
18 appointed agent in good standing of the Airlines Reporting
19 Corporation and (2) the seller of travel forwards the amount paid,
20 without offsetting or reducing the amount forwarded by any
21 amounts due or claimed in connection with any other transaction,
22 to the airline providing the transportation or to the Airlines
23 Reporting Corporation, the disclosures required by this section
24 with respect to that air transportation may be made orally.

25 SEC. 4. Section 17550.14 of the Business and Professions
26 Code is amended to read:

27 17550.14. (a) The seller of travel has an obligation either to
28 provide the air or sea transportation or travel services purchased
29 by the passenger or to make a refund as provided by this section.
30 The seller of travel shall return to the passenger all moneys paid
31 for air or sea transportation or travel services not actually provided
32 to the passenger, within either of the following periods, whichever
33 is earlier:

34 (1) Thirty days from one of the following dates:

35 (A) The scheduled date of departure.

36 (B) The day the passenger requests a refund.

37 (C) The day of cancellation by the seller of travel.

38 (2) Three days from the day the seller of travel is first unable
39 to provide the air or sea transportation or travel services.

As used in this section, “unable to provide” includes, but is not limited to, any day on which the passenger’s funds are not in the trust account required by Section 17550.15 and subdivision (g) of Section 17550.21 or the funds necessary to provide the passenger’s transportation or travel services have been disbursed other than as allowed by Section 17550.15 or subdivision (a) of Section 17550.16.

(b) If the seller of travel has disbursed the passenger’s funds pursuant to paragraph (1), (2), (3), or (4) of subdivision (c) of Section 17550.15, the seller of travel may, instead of providing a refund, provide to the passenger a written statement accompanied by bank records establishing that the passenger’s funds were disbursed as required by those provisions and, if disbursed to a seller of travel, proof of current registration of that seller of travel. A seller of travel who is exempt from the requirements of Section 17550.15 pursuant to subdivision (a) of Section 17550.16 and who is in compliance with subdivision (a) of Section 17550.16 may comply with this section by maintaining and providing to the passenger documentary proof of disbursement in compliance with subdivision (a) of Section 17550.16, and proof of current registration of the seller of travel to whom the funds were disbursed, which registration shall note that the registered seller of travel either has a trust account in compliance with Section 17550.15, or is exempt from the requirements of Section 17550.15 pursuant to subdivision (b) or (c) of Section 17550.16. This subdivision does not apply to refunds subject to subdivision (c) or subdivision (d).

(c) If terms and conditions relating to a refund upon cancellation by the passenger have been disclosed and agreed to by the passenger and the passenger elects to cancel for any reason other than a seller of travel being unable to provide the air or sea transportation or travel services purchased, the making of a refund in accordance with those terms and conditions shall be deemed to constitute compliance with this section.

(d) Any material misrepresentation by the seller of travel shall be deemed to be a violation of this article and cancellation by the seller of travel, necessitating a refund as required by subdivision (a).

SEC. 5. Section 17550.20 of the Business and Professions Code is amended to read:

1 17550.20. (a) Not less than 10 days prior to doing business in
 2 this state, a seller of travel shall apply for registration with the
 3 office of the Attorney General by filing with the Consumer Law
 4 Section the information required by Section 17550.21 and a filing
 5 fee of one hundred dollars (\$100) for each location from which the
 6 seller of travel conducts business. A late fee of five dollars (\$5) per
 7 day, up to a maximum of five hundred dollars (\$500), shall be paid
 8 for each day after the time specified by this section until the filing
 9 fee and the information required by Section 17550.21 are received.
 10 No registration shall be issued or approved until the late fee, and
 11 the filing and late fees for each year the seller of travel operated
 12 without being registered, have been paid. A seller of travel shall
 13 be deemed to do business in this state if the seller of travel solicits
 14 business from locations in this state or solicits prospective
 15 purchasers who are located in this state.

16 (b) Registration shall be valid for one year from the effective
 17 date thereof shown on the registration issued by the office of the
 18 Attorney General and may be annually renewed by making the
 19 filing required by Section 17550.21 and paying a filing fee of one
 20 hundred dollars (\$100) for each location from which the seller of
 21 travel conducts business. A late fee of five dollars (\$5) per day, up
 22 to a maximum of five hundred dollars (\$500), shall be paid for
 23 each day after the time specified by this section until the filing fee
 24 and the information required by Section 17550.21 are received. No
 25 registration shall be renewed until the late fee, and the filing and
 26 late fees for each year the seller of travel operated without being
 27 registered, have been paid.

28 (c) Whenever, prior to expiration of a seller of travel's annual
 29 registration, there is a material change in the information required
 30 by Section 17550.21, the seller of travel shall, within 10 days, file
 31 an addendum updating the information with the Consumer Law
 32 Section of the office of the Attorney General.

33 (d) (1) Not less than 10 days prior to the transfer or sale of any
 34 interest in a seller of travel, the selling or transferring owner shall
 35 file with the office of the Attorney General, Seller of Travel
 36 Program, a notice of encumbrance, sale, or transfer of ownership,
 37 using a form provided for that purpose by the office of *the*
 38 Attorney General. The notice shall provide the information
 39 required pursuant to subdivision (d) of Section 17550.21 as to each
 40 transferee.



(2) Until the time the notice of encumbrance, sale, or transfer of ownership required in paragraph (1) is filed as required, the selling, encumbering, or transferring owner is responsible for all acts of and obligations imposed by law on the transferee sellers of travel to the same extent as they would have been responsible had there been no transfer, sale, or encumbrance.

(e) The office of the Attorney General shall suspend the registration of any seller of travel who (1) fails to make any payment required pursuant to Article 2.7 (commencing with Section 17550.35) or (2) submits a check in payment of a registration fee or late fee required by this section that is not honored by the institution on which it is drawn. The Attorney General shall provide written notice to the seller of travel by first-class mail at the seller of travel's place of business set forth in the registration statement that the seller of travel's registration has been suspended until all fees that are due have been paid. The registration of the seller of travel shall be suspended until all such payments due have been collected.

(f) The Attorney General may, at his or her discretion and subject to supervision by the Attorney General or his or her delegate, contract out all or any part of the processing of registrations required by this section.

(g) This section does not apply to an individual, natural person who meets all of the following conditions:

(1) Has a written contract with a registered seller of travel to act on that registered seller of travel's behalf in offering or selling air or sea transportation and other travel goods or services in connection with the transportation.

(2) Acts only on behalf of a registered seller of travel with whom the person has a written contract in the offer or sale to a passenger of air or sea transportation and other goods or services in connection with the transportation and sells no other air or sea transportation or travel services to that passenger.

(3) Provides air or sea transportation or travel services that are offered or sold pursuant to the official agency appointment of the registered seller of travel with whom the person has a written contract.

(4) Does not receive any consideration for air or sea transportation or other travel services from the passenger.

(5) Requires the passenger to pay all consideration for air or sea transportation or other travel services directly to the air carrier or ocean carrier or to the registered seller of travel.

(6) Discloses both of the following:

(A) The person is acting on behalf of a registered seller of travel.

(B) The name, address, telephone number, and registration number of the registered seller of travel on whose behalf the person is acting.

The person shall make the disclosures required by this paragraph in writing to the passenger at the same time the passenger receives notice under Section 17550.13. If the person transacts business in this state on the Internet, the disclosures also shall appear on the home page of the person's Web site and ~~on the first page of~~ *shall be prominently set forth in* the first electronic mail message sent to the passenger that refers to the passenger's purchase of air or sea transportation or travel services.

(h) Whenever the Attorney General determines that a registration application is accurate and complete, the application shall be processed and a registration certificate shall be issued to the seller of travel within 21 days.

SEC. 6. Section 17550.21 of the Business and Professions Code is amended to read:

17550.21. Each filing pursuant to Section 17550.20 shall contain the following information:

(a) The name or names of the seller of travel, including the name under which the seller of travel is doing or intends to do business, if different from the name of the seller of travel.

(b) The seller of travel's business form and place of organization and, if operating under a fictitious business name, the location where the fictitious name has been registered. If the seller of travel does business in California from one or more locations in this state but does not maintain its principal place of business in this state, the seller of travel shall state whether it meets the requirements of paragraph (16) of subdivision (e) of Section 17511.1.

(c) The complete street address or addresses of all locations from which the seller of travel will be conducting business, including, but not limited to, locations at which telephone calls will be received from, or made to, passengers or other sellers of

1 travel. The statement shall designate which location is the
2 principal place of business.

3 (d) The complete business and residential addresses and
4 telephone numbers, the driver's license number and state of
5 issuance or equivalent personal identification, the social security
6 number, and the date of birth of each owner and principal of the
7 seller of travel. "Owner" means a person who owns or controls 10
8 percent or more of the equity of, or otherwise has claim to 10
9 percent or more of the net income of, a seller of travel. "Principal"
10 means an owner, an officer of a corporation, a general partner of
11 a partnership, or a sole proprietor of a sole proprietorship.

12 (e) A statement as to whether the seller of travel, any owner, or
13 principal, or any other seller of travel owned or managed by any
14 owner or principal of the seller of travel, or the seller of travel itself
15 has had entered against that person or entity any judgment,
16 including a stipulated judgment, order, made a plea of nolo
17 contendere, or been convicted of any criminal violation. The
18 statement shall identify the person, the court or administrative
19 agency rendering the judgment, order, or conviction, the docket
20 number of the matter, and the date of the judgment, order, or
21 conviction; where the judgment, order, or record of conviction is
22 filed; and the nature of the case or judgment. This subdivision does
23 not require disclosure of marital dissolution, child support, or child
24 custody proceedings.

25 (f) A copy of the travel certificates, if any, that are or will be
26 sold, marketed, or distributed to any person or entity by the seller
27 of travel.

28 (g) The seller of travel shall file with the Attorney General a
29 signed and dated statement indicating (1) the account number of
30 each trust account required by this article, (2) the name and address
31 of each financial institution at which the seller of travel maintains
32 a trust account required by this article, (3) any registration number
33 issued to the seller of travel by the Airline Reporting Corporation
34 or the International Association of Travel Agents Network, and (4)
35 a consent form consenting to the Attorney General, a district
36 attorney, or their representatives obtaining directly from the
37 Airlines Reporting Corporation, International Association of
38 Travel Agents Network, a seller of transportation, provider of
39 transportation, provider of travel services, and any financial
40 institution where passenger funds have been deposited, any



information related to an investigation of a seller of travel's compliance with this section. The consent form shall be provided by the Attorney General. If a bond is maintained in lieu of the trust account, a copy of that bond shall be filed with the Attorney General.

(h) A statement signed by each owner and principal granting permission to the office of the Attorney General to obtain from any financial institution or credit union at which any trust account required by Section 17550.15 is maintained, information relating to that trust account, as set forth in paragraph (2) of subdivision (f) of Section 17550.15.

(i) The name, address, and telephone number of each person described in subdivision (g) of Section 17550.20 with whom the seller of travel contracts.

(j) The information required by this section shall be verified by a declaration signed and dated by each owner and principal of the seller of travel, or in the case of a registered seller of travel that does business in California, from one or more locations in California, and that meets the requirements of paragraph (16) of subdivision (e) of Section 17511.1, by a duly authorized officer of the corporation, under penalty of perjury pursuant to the laws of the State of California. The declaration shall specify the date and location of signing. Upon reregistration by a previously registered seller of travel, the information required by this section may be verified by the chief executive officer of a corporation, managing partner of a partnership, or manager of a limited liability company.

SEC. 7. *Section 17550.30 of the Business and Professions Code is amended to read:*

17550.30. (a) The Travel Seller Fund is hereby created in the State Treasury. All fines, *penalties*, and fees, including late fees, collected pursuant to this article, *or any moneys collected for a violation of this article or Article 2.7 (commencing with Section 17550.35)* shall be deposited in the fund, and the money in the fund may be expended only for the purposes specified in this article.

(b) All money paid into the State Treasury and credited to the Travel Seller Fund shall be used by the Department of Justice in carrying out and enforcing the provisions of this article, including, but not limited to, the payment of salaries of Department of Justice personnel, contractors, or consultants, *and the dissemination of*

1 *information, including consumer education regarding this article*
2 *and Article 2.7 (commencing with Section 17750.35).*

3 (c) The sum of three hundred ninety-five thousand dollars
4 (\$395,000) is hereby appropriated from the Travel Seller Fund to
5 the Department of Justice for purposes of the Sellers of Travel
6 Program established pursuant to Article 2.6 (commencing with
7 Section 17550).

8 SEC. 8. Section 17550.34 of the Business and Professions
9 Code is repealed.

10 ~~SEC. 8.~~

11 SEC. 9. Section 17550.37 of the Business and Professions
12 Code is amended to read:

13 17550.37. (a) “Person aggrieved,” as used in this article,
14 means a passenger, as defined in Section 17550.3, located in
15 California at the time of sale, or a person located in California at
16 the time of sale who made any payment on behalf of the passenger
17 for air or sea transportation or travel services, who has sustained
18 a loss as a result of the failure of a seller of travel to refund
19 payments made by or on behalf of a passenger as payment for air
20 or sea transportation or travel services, where a refund is due as a
21 result of the bankruptcy, insolvency, cessation of operations, or
22 material failure to provide the transportation or travel services
23 purchased by the passenger. “Loss,” as used herein, shall be
24 limited to losses that are incurred in a transaction with a seller of
25 travel who, at the time of sale, was a paid-up participant in the
26 Travel Consumer Restitution Fund and was registered pursuant to
27 Section 17550.20. “Person aggrieved” shall not mean or include
28 a passenger, or person making payment on behalf of a passenger,
29 in a transaction where the air or sea transportation or travel
30 services are furnished by a business entity that (a) is located and
31 providing transportation or travel services outside of the United
32 States and (b) is not in compliance with Article 2.6 (commencing
33 with Section 17550).

34 (b) Any person aggrieved who files a claim for payment from
35 the Travel Consumer Restitution Fund thereby waives his or her
36 right to bring any action at law or equity that (1) is against the seller
37 of travel as to whom the claim is made and (2) arises from the
38 transaction that is the subject of the claim against the restitution
39 fund. The claim form required by Section 17550.46 shall include
40 a clear and conspicuous notice of the waiver.



(c) The waiver of rights provided for by subdivision (b) shall not apply to any claimant whose claim is denied on any of the following grounds, as set forth in the statement of decision required by subdivision (d) of Section 17550.47:

(1) The seller of travel was not, at the time of sale, a paid-up participant in the Travel Consumer Restitution Fund, as required by subdivision (a).

(2) The seller of travel was not, at the time of sale, registered pursuant to Section 17550.20.

(3) The claimant was not located in California at the time of sale, as required by subdivision (a).

~~SEC. 9.~~

SEC. 10. Section 17550.41 of the Business and Professions Code is amended to read:

17550.41. (a) The Board of Directors of the Travel Consumer Restitution Corporation shall be composed of six directors, as follows:

(1) One public consumer representative member appointed by the Director of Consumer Affairs.

(2) One employee of the Department of Justice, assigned by the office of the Attorney General, who shall serve as an ex officio, nonvoting member.

(3) Four directors who are participants in the Travel Consumer Restitution Fund.

(b) The director appointed pursuant to paragraph (1) of subdivision (a) shall serve until the appointment is revoked or another appointment is made, or until the director resigns.

(c) Participant directors shall be elected by a balloting of all participants in the Travel Consumer Restitution Fund in an election to be conducted by the Travel Consumer Restitution Corporation in February of each year. Participant directors shall be elected to serve two-year terms, with two of the four participant directors being elected each year to staggered two-year terms.

(d) A person is eligible to be nominated and to serve as a participant director if the person satisfies all of the following conditions:

(1) The person's primary occupation, at the time of nomination and continuously during the previous three years, has been as the owner or manager of a seller of travel that is and has been in good

1 standing both as a registered seller of travel and as a participant in
2 the Travel Consumer Restitution Fund.

3 (2) The person has not been convicted of a crime, including a
4 plea or verdict of guilty or a conviction following a plea of nolo
5 contendere.

6 (3) The person is not subject to a judgment or administrative
7 order, whether entered after adjudication or stipulation, predicated
8 on that person's commission of an act of dishonesty, fraud, deceit,
9 or violation of this chapter or Chapter 5 (commencing with Section
10 17200) of Part 2 of Division 7.

11 (4) The person is not a defendant in a pending criminal or civil
12 law enforcement action brought by a public prosecutor.

13 (5) The person has not served as a participant director of the
14 Travel Consumer Restitution Fund at any time during the previous
15 18 months.

16 (6) Within five days after the end of the nomination period, the
17 person nominated to be a director submits an application to the
18 Travel Consumer Restitution Fund, signed under penalty of
19 perjury, that attests to the person's satisfaction of all of the
20 conditions specified in paragraphs (1) to (5), inclusive.

21 (e) The Travel Consumer Restitution Fund may not impose
22 requirements for nomination to be a participant director in addition
23 to the requirements described in subdivision (d).

24 (f) If a nominee does not satisfy the requirements of
25 subdivision (d), the Travel Consumer Restitution Fund shall notify
26 the nominee and the Attorney General in writing, within 30 days
27 of the nominee's application, that the person has been rejected as
28 a nominee and the specific grounds for the rejection.

29 (g) The nomination period shall be open for the period
30 beginning 90 days and ending 30 days before the election. Any
31 participant may nominate for election any participant who is
32 eligible to serve as provided in subdivision (d).

33 (h) The Travel Consumer Restitution Fund shall enable
34 nominees to submit, within 21 days before the election, written
35 statements of up to 500 words in a reasonable format concerning
36 their candidacy and shall *mail those statements to participants in*
37 *the Travel Consumer Restitution Fund and* make those statements
38 publicly available no later than 14 days before the election by
39 means that may include disseminating the information on an
40 Internet Web site or providing the information by electronic mail

1 to any person who has requested the information and provided a
2 valid electronic mail address.

3 (i) A director who does not qualify to be a participant or who
4 otherwise becomes unable to serve shall not continue to serve as
5 director. The board of the Travel Consumer Restitution
6 Corporation shall adopt rules setting forth the procedures to
7 determine that a director is no longer able to serve as a director and
8 for the board to elect a successor to serve as director until the next
9 election.

10 ~~SEC. 10.~~

11 *SEC. 11.* Section 17550.42 is added to the Business and
12 Professions Code, to read:

13 17550.42. (a) Within 30 days of the close of the fiscal year or
14 other reasonable period established by the board of directors, the
15 Travel Consumer Restitution Corporation shall make publicly
16 available a statement of the following information concerning the
17 most recently concluded fiscal year:

18 (1) The number of claims and approximate dollar amount of the
19 claims received.

20 (2) The total number of claims and total dollar amount of
21 claims paid.

22 (3) The approximate number and dollar amount of claims
23 denied or abandoned.

24 (4) The dollar balance in the restitution fund.

25 (5) The amount of assessments received from participants and
26 the operating and administrative costs and expenses of the
27 corporation.

28 (6) The number of new participants and the amount of
29 assessments received from them.

30 (b) The Travel Consumer Restitution Corporation shall make
31 publicly available within 15 days of the board of directors'
32 approval, or other reasonable period established by the board of
33 directors, the following information:

34 (1) The approved minutes of meetings of the board of directors.

35 (2) The approved estimated annual operational budget
36 projecting the costs of operations and administration for the
37 succeeding fiscal year, excluding the amount to be paid for claims.

38 (3) The approved bylaws, as amended, of the Travel Consumer
39 Restitution Corporation.

(c) Information may be made publicly available as required by this section by disseminating the information on an Internet Web site or providing the information by electronic mail to any person who has requested the information and provided a valid electronic mail address.

~~SEC. 11.~~

SEC. 12. Section 17550.47 of the Business and Professions Code is amended to read:

17550.47. (a) (1) Any person aggrieved who suffers a loss of more than fifty dollars (\$50) of amounts paid for air or sea transportation or travel services may file a claim with the Travel Consumer Restitution Corporation by filing a claim form as required by Section 17550.46 and paying, by check or money order, a processing fee to the Travel Consumer Restitution Corporation in the amount of thirty-five dollars (\$35). Any check for the processing fee that is returned unpaid to the corporation by the financial institution upon which it is drawn shall be returned to the claimant and the claim shall be rejected for filing. Any claimant whose claim is rejected may resubmit his or her claim upon payment of a processing fee of fifty dollars (\$50).

(2) Any processing fee required by paragraph (1) shall be nonrefundable except where (A) a claim is denied on the basis as set forth in the statement of decision that either the seller of travel, at the time of sale, was not a participant in the Travel Consumer Restitution Fund or the seller of travel was not registered, or (B) the claim is granted in whole or in part. In either case, the processing fee shall be refunded to the person aggrieved upon denial or upon payment of the claim, whichever is applicable.

(3) In no event shall a person aggrieved have more than one year after the scheduled date of completion of travel within which to file a claim with the Travel Consumer Restitution Fund.

(b) A person aggrieved may recover from the Travel Consumer Restitution Fund an amount not to exceed fifteen thousand dollars (\$15,000) per person aggrieved, not to exceed the amount paid to the participant by or on behalf of the person aggrieved for the transportation or travel services. Payments from the restitution fund shall be limited to restitution for sums paid for transportation or travel services and shall not include any other amounts, including, but not limited to, payment for lost wages, pain and suffering, emotional distress, travel insurance, lost luggage, or any

1 consequential damages. The person aggrieved shall not be entitled
2 to receive attorney's fees in connection with a filed claim or on
3 appeal.

4 (c) All claims are to be decided on the written record before the
5 corporation, with no hearing to be held. The record shall consist
6 of a fully executed and complete claim form, any other
7 documentation submitted by the claimant or the participant, and
8 any documents or reports submitted by staff or the designated
9 representative of the office of the Attorney General. Claims are to
10 be decided within 45 days of receipt unless (1) the designated
11 representative of the office of the Attorney General requests a
12 continuance to obtain and submit information, or (2) the Travel
13 Consumer Restitution Corporation determines that additional
14 information or documentation is required to decide the claim. In
15 either case, the claim shall be decided within 45 days of receipt of
16 all additional information or documentation. A claim not decided
17 timely shall be deemed granted.

18 (d) Whenever the Travel Consumer Restitution Corporation
19 denies a claim in whole or in part, it shall provide to the claimant
20 a written statement of decision setting forth the factual and legal
21 basis for the denial.

22 (e) A claimant may request reconsideration of an adverse
23 decision of the Travel Consumer Restitution Corporation by
24 mailing a written request, accompanied by a processing fee of fifty
25 dollars (\$50) paid by check or money order, within 20 days of the
26 date a notice of denial and statement of decision was mailed to the
27 claimant. Any check for the processing fee that is returned unpaid
28 to the Travel Consumer Restitution Corporation by the financial
29 institution upon which it is drawn shall be returned to the claimant
30 and the request for reconsideration shall not be determined until
31 the claimant has paid the fifty ~~dollars~~ *dollar* (\$50) processing fee.

32 (f) The Travel Consumer Restitution Corporation shall, within
33 60 days of receipt of the request, either decide the request or advise
34 the claimant that additional information or documentation is
35 needed, and, if the decision is a denial in whole or in part, it shall
36 provide to the claimant and seller of travel a written statement of
37 decision setting forth the factual and legal basis for the decision.
38 No appeal may be taken pursuant to subdivision (g) until
39 reconsideration has been requested and decided. The claimant

1 shall not be entitled to any attorney's fees incurred in connection
2 with presentation of a claim or request for reconsideration.

3 (g) No decision of the Travel Consumer Restitution
4 Corporation granting or denying a claim in whole or part shall be
5 subject to review or appeal except as provided in this section. A
6 claimant may seek review of the denial, in whole or part, of a claim
7 by filing a notice of appeal after having served the notice by mail
8 on the Travel Consumer Restitution Corporation. The notice of
9 appeal shall be filed and served on the Travel Consumer
10 Restitution Corporation not later than 30 days after a written
11 statement of decision on a request for reconsideration has been
12 mailed to the claimant. The notice of appeal from a decision of the
13 Travel Consumer Restitution Corporation shall be filed with the
14 clerk of the superior court either in the county in which the
15 principal place of business of the Travel Consumer Restitution
16 Corporation is located, or in the county in which the claimant was
17 a resident at the time the claimant purchased the transportation or
18 travel services in dispute.

19 (h) The claimant shall pay the same filing fee as is required for
20 appeals from small claims court. The Travel Consumer Restitution
21 Corporation shall file its response and the record of the claim
22 before the corporation with the clerk of the superior court within
23 30 days of the day the notice of appeal was served on the Travel
24 Consumer Restitution Corporation.

25 (i) Upon the filing of the record the clerk of the court shall
26 schedule a hearing for the earliest available time and shall mail
27 written notice of the hearing at least 14 days prior to the time set
28 for the hearing.

29 (j) The hearing on appeal shall be limited to the record before
30 the Travel Consumer Restitution Corporation and any relevant
31 evidence that could not have been with reasonable diligence
32 submitted previously to the corporation. The reviewing court shall
33 affirm the decision if it is supported by substantial evidence in light
34 of the entire record. The pretrial discovery procedures described
35 in subdivision (a) of Section 2019 of the Code of Civil Procedure
36 are not permitted, there is no right to trial by jury, and the decision
37 of the superior court shall be appealable by either party. No money
38 may be claimed from or paid by the Travel Consumer Restitution
39 Fund except in accordance with the provisions and procedures set
40 forth in this article. No provision herein shall limit or otherwise



affect those remedies as may be available against persons or entities other than the Travel Consumer Restitution Corporation.

(k) If the claimant prevails in whole or in part on an appeal, the claimant shall not be entitled to an award in excess of the amount of the original claim.

(l) Any claim awarded by the corporation shall be paid promptly by the trustee of the restitution fund when the time for appeal has passed. Any judgment on appeal shall be paid promptly by the trustee of the restitution fund whenever the judgment becomes final. If there should be insufficient funds to pay a claim when otherwise due, claims shall be paid in the order received. If the Travel Consumer Restitution Corporation ceases to operate pursuant to the terms of Section 17550.52, any remaining trust funds shall be allocated on a pro rata basis to claims accruing prior to the corporation ceasing to operate, after payment of outstanding debts and liabilities as provided in Section 17550.57.

(m) A claim shall require a majority of at least three affirmative votes for denial, otherwise it shall be deemed granted.

(n) (1) A director shall not participate in the decision of a claim if the director has a financial interest in the outcome of the decision, has a financial interest in or is employed by the seller of travel that is the subject of the claim, or has any familial relationship or close personal friendship with either the claimant or any owner, officer, director, or manager of the seller of travel that is the subject of the claim.

(2) The director shall disclose to the other directors before a claim is considered all matters that disqualify the director from participating in the decision of the claim as described in paragraph (1).

~~SEC. 12.~~

SEC. 13. Section 17550.59 of the Business and Professions Code is repealed.

~~SEC. 13.~~

SEC. 14. It is the intent of the Legislature that the Attorney General consider reasonable improvements to the operation and functioning of the seller of travel registration program to reduce operational costs, such as the implementation of electronic registration and registration renewals, if practicable and consistent with prudent management and continued or improved levels of consumer protection.

1 ~~SEC. 14.~~

2 *SEC. 15.* No reimbursement is required by this act pursuant
3 to Section 6 of Article XIII B of the California Constitution
4 because the only costs that may be incurred by a local agency or
5 school district will be incurred because this act creates a new crime
6 or infraction, eliminates a crime or infraction, or changes the
7 penalty for a crime or infraction, within the meaning of Section
8 17556 of the Government Code, or changes the definition of a
9 crime within the meaning of Section 6 of Article XIII B of the
10 California Constitution.

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